

37 Am. Jur. 2d Fraud and Deceit § 123

American Jurisprudence, Second Edition | May 2021 Update

Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

2. Knowledge of Falsity

§ 123. Rules dispensing with knowledge of falsity; statutes

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) 13(2)

In some states, a maker's knowledge of the falsity of a material misrepresentation of fact is not a necessary element of fraud.¹ In some jurisdictions, in actions for damages for false representations, it is not necessary to allege or prove scienter,² or knowledge of the falsity of a statement,³ and it is sufficient if the representations were false in fact, and the defendant may be liable for damages because of them even though the defendant did not know that they were untrue.⁴ In one jurisdiction, a party making a misrepresentation need not know that a statement is false in order to be liable for fraud if the fact represented is susceptible of actual knowledge.⁵ Likewise, in another jurisdiction, a plaintiff does not need to prove that the defendant actually knew the representations were false if the defendant was in a position to know, and had a duty to know, whether the representations were true or false.⁶ Under the law of strict responsibility misrepresentation, whether a defendant knew or did not know the represented facts is immaterial.⁷ When liability for strict responsibility misrepresentation is imposed, it is not due to the defendant's knowledge or negligence, but rather due to the public policy that when a loss arises because an innocent defendant misled an innocent plaintiff, the loss should be borne by the party which made the misrepresentation in cases where public opinion seems to call for such a result.⁸

By statute in some states, to be actionable, a representation need not be made with knowledge of actual falsity but need only be an assertion, as a fact, of that which is not true by one who has no reasonable ground for believing it to be true.⁹ It is provided, for instance, that a misrepresentation of a material fact made by mistake and innocently and acted on by the opposite party, constitutes legal fraud.¹⁰

Footnotes

- 1 [Bros Inc. v. W. E. Grace Mfg. Co.](#), 227 F. Supp. 759 (N.D. Tex. 1964), judgment rev'd on other grounds, 351 F.2d 208, 9 Fed. R. Serv. 2d 60B.29, Case 5 (5th Cir. 1965).
- 2 [Ashby v. Peters](#), 128 Neb. 338, 258 N.W. 639, 99 A.L.R. 843 (1935); [Paul v. Cameron](#), 127 Neb. 510, 256 N.W. 11 (1934).
- 3 [Cordial v. Ernst & Young](#), 199 W. Va. 119, 483 S.E.2d 248 (1996).
- 4 [Irwin v. Carlton](#), 369 Mich. 92, 119 N.W.2d 617 (1963).
- 5 [Damon v. Sun Co., Inc.](#), 87 F.3d 1467 (1st Cir. 1996) (applying Massachusetts law).
- 6 [Wolford v. Children's Home Society of West Virginia](#), 17 F. Supp. 2d 577 (S.D. W. Va. 1998).
- 7 [Lewis v. Paul Revere Life Ins. Co.](#), 80 F. Supp. 2d 978 (E.D. Wis. 2000).
- 8 [Lewis v. Paul Revere Life Ins. Co.](#), 80 F. Supp. 2d 978 (E.D. Wis. 2000).
- 9 [Gagne v. Bertran](#), 43 Cal. 2d 481, 275 P.2d 15 (1954).
- 10 [Lawson v. Harris Culinary Enterprises, LLC](#), 83 So. 3d 483 (Ala. 2011).

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